

Notice of Allowability

Application No.

10/709,417

Examiner

Andrea M. Valenti

Applicant(s)

DOWNEY, DARRELL KEITH

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 27 December 2005.
2. ☒ The allowed claim(s) is/are 1-6 and 8-20.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DRAFT

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone/e-mail interview with Richard D. Fuerle on 16 March 2006.

The application has been amended as follows:

Claim 1, section (A), line 2, "having two ends, where no surface on the inside of said tube contacts a surface on the opposing side of said tube except" was changed to -
-having two ends and opposing inside surfaces, where the opposing inside surfaces do not contact each other except--

Claim 1, section (B), "means for attaching said flaps to stakes that can be driven into the ground, whereby said stakes hold the ends of said tube higher than rest of said tube;" was changed to --horizontal slits extending part of the way across said flaps, whereby one or more stakes are inserted through said slits and said stakes hold top ends of said tube higher than rest of said tube, the bottom of said tube substantially contacts the ground surface;--

Claim 1, section (C), line 2, "where said tube is higher than at the middle," was changed to --where said top ends of said tube are higher than any other top portion of said tube between said seals,--

Claim 1, section (D), line 1-2, “into said compartment, at or near the base of said tube,” was changed to --in said compartment, at or near the bottom of said tube,--

Claim 7 was cancelled

Claim 13, line 1, “A device according to Claim 7” was changed to --A device according to Claim 1--

Claim 19, section (A), line 2, “having two ends, where no surface on the inside of said tube contacts a surface on the opposing side of said tube except” was changed to --having two ends and opposing inside surfaces, where the opposing inside surfaces do not contact each other except--

Claim 19, Section (C), line 4, “stakes hold the ends” was changed to --stakes hold top ends--

Claim 19, Section (C), line 5, “tube;” was changed to --tube, the bottom of said tube substantially contacts the ground surface--

Claim 19, section (D), line 2-3, “where said tube is higher than at the middle,” was changed to --where said top ends of said tube are higher than any other top portion of said tube between said seals,--

Claim 19, section (E), line 2, “at or near the base of said tubes,” was changed to --at or near the bottom of said tubes,--

Claim 20, section (A), subsection (1), line 1-2, “two ends, where no surface on the inside of said tube contacts a surface on the opposing side of said tube except” was changed to --two ends and opposing inside surfaces, where the opposing inside surfaces do not contact each other except--

Claim 20, Section (A), subsection (4), line 1, "at or near the base" was changed to --at or near the bottom--

Claim 20, Section (A), subsection (4), line 2, "tube; and" was changed to --tube, the bottom of said tube substantially contacts the ground surface; and--

Claim 20, section (B), line 2, "holds the ends" was changed to--holds top ends--

Allowable Subject Matter

Claims 1-6 and 8-20 are allowed.

The following is an examiner's statement of reasons for allowance:

Cited references U.S. Patent No. 6,108,970; U.S. Patent Pub. No. US 2003/0203799; U.S. Patent No. 2,753,156; French Patent FR 2666958 A1; United Kingdom Patent GB 2113062A; French Patent FR 2561063; German Patent DE 3304800; U.S. Patent No. D493,075; U.S. Patent No. U.S. Patent No. 6,385,900; U.S. Patent No. 5,020,271; U.S. Patent No. 4,869,018; U.S. Patent No. 6,484,439; U.S. Patent No. 5,067,272; U.S. Patent No. 6,293,477; U.S. Patent No. 4,071,974; U.S. Patent No. 5,301,633; U.S. Patent No. 5,117,582; U.S. Patent No. 5,613,320; U.S. Patent No. 2,511,486; U.S. Patent No. 3,711,992 teach drip emitter water tanks/tubes that rest on the ground or are staked to the ground via flaps at the ends of the tubes. Prior art of record also teaches thermal blankets for vegetation applications filled with water and the ends of the blanket staked higher to prevent the water from coming out of the ends.

Art Unit: 3643

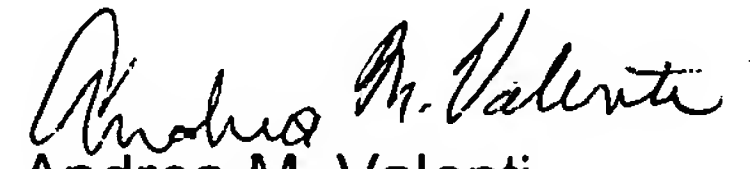
The prior art of record all fails to show, and fails to make obvious, either alone and or in combination a tube with opposing inside surfaces that do not contact each other except about 2 to about 6 inches from each end of said tube, where a water tight seal extends from the bottom of said tube to the top of said tube and creates a flap; horizontal slits extend part of the way across the flaps and one or more stakes are inserted through the slits and hold the top ends of the tube higher than the rest of the tube; the bottom of the tube substantially contacts the ground surface; the top ends of the tube are higher than any other top portion of the tube and there are openings in the tube at or near the seals i.e. at or near the ends of the tubes; at least one drip emitter; and whereby when said tube is filled with water said tube assumes a cross-sectional shape that is wider than it is high and when said tube is empty it may be laid flat and rolled up (i.e. it is flexible).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

16 March 2006